

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

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|--------------|---|-------------------------------------|
| Kevin Eyers, |) | |
| |) | |
| Plaintiff, |) | Civil Action No.: 3:18-cv-03497-JMC |
| |) | |
| v. |) | |
| |) | |
| Lowe's, |) | ORDER |
| |) | |
| Defendant. |) | |
| _____ |) | |

Before the court for review is the Magistrate Judge's Report and Recommendation ("Report") filed on February 8, 2019 (ECF No. 16). The court **ACCEPTS** the Magistrate Judge's Report and incorporates it herein by reference. For the reasons set out in the Report, the court **DISMISSES** *without prejudice* Plaintiff Kevin Eyers' Complaint (ECF No. 1) for failure to prosecute.

I. FACTUAL AND PROCEDURAL BACKGROUND

The Report sets forth the relevant facts and legal standards, which this court incorporates herein without a full recitation. (ECF No. 16 at 1–3.) As brief background, on December 18, 2018, Plaintiff, proceeding pro se, filed a Motion for leave to proceed in forma pauperis under 28 U.S.C. § 1915. (ECF No. 3.) On December 20, 2018, the Magistrate Judge entered an order directing Plaintiff to bring his case into proper form. (ECF No. 9.) On January 15, 2019, the Magistrate Judge issued a second order directing Plaintiff to bring his case into proper form. (ECF No. 13.) Plaintiff was warned that the failure to comply with the court's order would subject the case to dismissal. (ECF No. 9 at 1; ECF No. 13 at 1.) Plaintiff failed to respond to the court's orders. (ECF No. 16 at 1.)

On February 8, 2019, the Magistrate Judge entered her Report. (ECF No. 16.) The Report recommends dismissing Plaintiff's Complaint (ECF No. 1) without prejudice for failure to prosecute pursuant to Fed. R. Civ. P. 41. (ECF No. 16 at 2.)

II. STANDARD OF REVIEW

The Magistrate Judge's Report and Recommendation is made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 for the District Court of South Carolina. The Magistrate Judge only makes a recommendation to this court; the responsibility to make a final determination remains with this court. *See Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). This court engages in a de novo review of those portions of the Report and Recommendation to which the parties have made specific objections. *See* 28 U.S.C. § 636(b)(1). *See also* Fed. R. Civ. P. 72(b)(3). The court may accept, reject or modify, in whole or in part, the Magistrate Judge's recommendation or recommit the matter with instructions. *See* 28 U.S.C. § 636(b)(1).

III. DISCUSSION

On February 8, 2019, as part of the Report, the Magistrate Judge notified the parties of their right to file objections by February 22, 2019. (ECF No. 16 at 3.) Neither of the parties filed any objections to the Report by this date. In the absence of objections to the Magistrate Judge's Report, this court is not required to provide an explanation for adopting the recommendations without modification. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). Absent objections, the court must only ensure that there is no clear error on the face of the record in order to accept the recommendations. *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note). If a party fails to file specific, written objections to the Report, the party forfeits the right to appeal the court's decision concerning the Report. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *United States*

v. Schronce, 727 F.2d 91 (4th Cir. 1984). Accordingly, since none of the parties filed any objections to the Report, and the court observes no clear error on the face of the record, the court accepts the Magistrate Judge's Report. *See Diamond*, 416 F.3d at 315; *Camby*, 718 F.2d at 199.

IV. CONCLUSION

After a thorough and careful review of the record, the court finds the Magistrate Judge's Report and Recommendation provides an accurate summary of the facts and law in this case. Accordingly, the court **ACCEPTS** the Magistrate Judge's Report and Recommendation (ECF No. 16) and incorporates it herein by reference. For the reasons set out in the Report, the court **DISMISSES** *without prejudice* Plaintiff's Complaint (ECF No. 1) for failure to prosecute.

IT IS SO ORDERED.

A handwritten signature in black ink, reading "J. Michelle Childs". The signature is written in a cursive, flowing style.

United States District Judge

June 5, 2019
Columbia, South Carolina